IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION
GENERAL LIST

Revised
Not Restricted
Suitable for Publication

Case No. CR-19-01026
Indictment No. H12187140

DIRECTOR OF PUBLIC PROSECUTIONS

v

ERDEN HASSAN

JUDGE:	HIS HONOUR JUDGE McINERNEY
WHERE HELD:	Melbourne
DATE OF HEARING:	7, 8, 9, 13, 14, 15, 16, 20, 22, 23, 24, 27 and 28 February, 1, 2 and 3 March (Trial), and 5 April 2023 (Plea)
DATE OF SENTENCE:	10 May 2023
CASE MAY BE CITED AS:	DPP v Hassan
MEDIUM NEUTRAL CITATION:	[2023] VCC 632

REASONS FOR SENTENCE

Subject:	CRIMINAL LAW – Sentence
Catchwords:	Obtain financial advantage by deception – six charges
Legislation Cited:	*Crimes Act* 1958; S82(1), *Sentencing Act* 1991; S6H(1)(c), S6I, S6J(1); S37, S5(4C)
Cases Cited:	*The Queen v Roussety* [2008] VSCA 259; *R v Grossi* (2008) 23 VR 500; *DPP (Cth) v Peng* [2014] VSCA 128; *DPP v Dalgliesh (a pseudonym)* (2017) 91 ALJR 1063; *Boulton and Anor v R* [2014] VSCA 342; *Hutchinson v The Queen* [2015] VSCA 115
Sentence:	Convicted and sentenced to two years and eleven months' imprisonment.

APPEARANCES:	Counsel	Solicitors
For the Director of Public Prosecutions	Mr D Porceddu with Ms O Go	Solicitor for the Office of Public Prosecutions
For the Accused	Mr P A Chadwick KC	Portfolio Law Pty Ltd

HIS HONOUR:

1 Mr Hassan is aged fifty-seven and was born in August 1955. He stood trial on 7 February 2023 in regard to ten charges on Indictment number H12187140.

2 At that trial, Mr Chadwick, of His Majesty's Counsel, appeared on behalf of Mr Hassan and Mr Porceddu and Ms Go appeared on behalf of the Director.

3 Mr Hassan pleaded not guilty to each of the ten charges laid pursuant to S82(1) of the *Crimes Act* 1958 (Vic) of obtain financial advantage for another by deception.

4 The trial lasted sixteen days. On 3 March 2023, the Jury delivered its verdicts, finding Mr Hassan guilty of Charges 4, 5, 6, 8, 9 and 10 and not guilty of Charges 1, 2, 3 and 7.

5 On each guilty charges, the Jury were asked which particular, as detailed in the Indictment, did the Jury found proved beyond reasonable doubt, and in each instance answered "Particular (a)", being that Mr Hassan had falsely represented on each contract the name of the estate agent, thereby committing the deception which was a cause of the financial advantage, or mortgage, being obtained from the ANZ Bank in each instance in favour of the purchaser under each contract.

6 The Jury, who by their questions had demonstrated intelligence and diligence, obviously were not satisfied in regard to Charges 2, 3 and 7, that Mr Hassan was the agent, and not Ms Becker as Mr Hassan had sworn to in his evidence.

7 Clearly, in regard to Charges 4, 5, 6, 8 and 10, the finding of the contracts, with the false agent details, pursuant to a warrant executed on 2 August 2017 at Mr Hassan's business premises in the respective files, the subject of the Notice of Admission (Exhibit P 14), and the confirmation that such were the form of contract forwarded to the Bank in each instance for the purpose of applying for

each loan, was important evidence before the Jury as to who prepared the contract and its form.

8 As to Charge 9, there was clear evidence, albeit a copy of the relevant contract forwarded to the Bank was not found in Mr Hassan's office files, from the purchaser, Mr Liolongo, that the contract was brought to him at his friend's house to be signed by Mr Hassan, that Mr Liolongo never dealt with any agent but Mr Hassan and certainly not Barry Plant of Melton. As to this charge, I do not accept Mr Chadwick's submission set out in Exhibit 1 on the plea at paragraph 13.

9 In making such guilty findings, the Jury clearly rejected Mr Hassan's evidence.

10 I accept the interpretation in such regard put to me by both Mr Chadwick and Mr Porceddu, that the Jury had determined that Mr Hassan was aware of the ANZ Bank policy at the time (Exhibit P 11), and specifically aware from conversations at a meeting with Mr Akkala, attended by phone by Mr Anand, of the ANZ valuation policy, where if the borrowing was under 85 per cent of the contract price, and the sale was effected by a real estate agent, independent of any association with the vendor, then the loan was likely to be approved without the need for further valuation (see Mr Porceddu, Exhibit A on the plea, paragraphs 6-9, and Mr Chadwick's statement in the plea that there is common ground as to the circumstances of the criminality – see Exhibit 1, paragraphs 4-12).

The value of financial advantage

11 The ANZ Bank advanced to the six purchasers, owing to the joint fraudulent conduct of Mr Hassan, Mr Akkala and Mr Anand, the sum of $2,206,409.70.

12 It is important to point out, given the Jury verdicts, that Mr Hassan's criminality encompasses only his actions in attaching to each contract false details as to the real estate agent.

13 Although, as a fact, the fraudulent conduct of Akkala and Anand was jointly causative of the deception upon the ANZ, the Jury found no involvement of Mr Hassan in the false statements of financial particulars forwarded to the Bank on behalf of each purchaser by Akkala and Anand.

14 Such discrimination is not to reduce the serious criminality of Mr Hassan. While not foolproof, and subject to further security and random checking, clearly in each of these contracts the actions of Mr Hassan, upon the evidence of the Bank witnesses, was that had such falsity of the nominated agent in each contract been known, each of the applications would have been refused by the Bank. The prosecutor submits that the nature and the gravity of the offending by Mr Hassan was serious (paragraph 57), and in such regard general deterrence is of prime importance (see defendant's submission, Exhibit 1, paragraph 1).

15 Given the type of offence, Mr Hassan is to be sentenced as a continuing criminal enterprise offender (see S6H(1)(c) of the *Sentencing Act*), and the maximum penalty for each offence is increased to twenty years (S6I), and the sentence, as such an offender, must be noted in the records of the Court (S6J(1)). It is to be noted on each charge that the financial advantage obtained is substantially more than the threshold which relates to each such charge: on average, seven times higher.

16 I note the comments of Ashley JA in *The Queen v Roussety* [2008] VSCA 259, [59], that it is not inevitable that a heavier sentence be imposed. However, I also refer to Redlich JA in *R v Grossi* (2008) 23 VR 500, [42], where it was stated that where there is the same continuing criminal propensity, a higher sentence can be imposed.

17 I find, given the extensive experience of Mr Hassan as a developer/estate agent, his criminality was persistent and planned, and carried out in circumstances which, while they do not amount to a breach of trust, do amount to knowingly

utilising the goodwill of the Bank to established agents, in order to flout the banking practice of the ANZ known to Mr Hassan, for self-gain.

18 I note Mr Chadwick's submission that such criminal conduct was contained within eight weeks. I do dispute that such was not difficult to detect. Given the propensity of agents to seek a commission, I consider it very unlikely for a bank to consider such a fraud would be so perpetrated; hence, here, each loan was approved in a very short time from the lodging for approval. As to potential loss to the banks, given the economic status of the purchasers utilised by Mr Hassan, there was a high risk of loss to the Bank. I note, however, that Mr Chadwick submits each purchaser is still living in the properties. However, the Court is of course unaware of their payment history and possible defaults.

19 As to an explanation for Mr Hassan's criminality, I find only one: that is, greed. Mr Hassan is a wealthy man, who has been very successful in land development and real estate. Apparently, he was part of the development of Melton West sales, as a result of which the Erden Property Group, I was advised, currently has assets in the order of $60m.

20 What each sale did for Mr Hassan and his interests was to free up, in each instance, capital by the payout of mortgages to the National Bank given to Mr Hassan and his interests to develop the blocks (see Exhibit P 13). This situation would have been impossible from the sale to either purchaser based upon their personal assets, but only possible because the ANZ was deceived.

21 In each instance the purchasers were utilised to free Mr Hassan and his entities from debt. Such was a substantial positive for a developer in circumstances where contracts tendered to the Bank were inflated from the original purchase price considerably, from $20,000 in Charge 4 to $50,000 in Charge 10. I make the point, of course, that Mr Hassan was not charged for this circumstance.

22 Given Mr Hassan's experience, to suggest, as Mr Chadwick argued, that such sale and payment out of the National Bank mortgage was offset by the loss of an asset, must be rejected. Clearly the value of the property at the time of the loan obtained from the ANZ Bank was effectively what Mr Hassan was able to obtain by deception from the Bank. He of course in each instance had previously divested himself and entities of the assets by the terms contract sales. The monies owed under such terms contracts were effectively transferred to the Bank, as mortgagee. He of course obtained additional payments by way of commission and profit, which is referred to in Mr Chadwick's submission at paragraph 17.

Finding as to motivation

23 I find that these six crimes were committed for greed.

24 I should add that I am not naive enough to consider that the negligence of the ANZ Bank did not make the effecting of Mr Hassan's criminality easier. Such deficiencies no doubt were dealt with by the recent Royal Commission into Banking. However, such negligence does not in any way assist Mr Hassan.

25 A further illustration of the real purpose of the criminality was the bizarre fact that in each instance, in order to effect settlement, the vendor had to pay the balance required, or come to an arrangement with the impecunious purchasers that such sum would be paid on their behalf, to ensure settlement occurred, with the purchasers agreeing to refund the amount to the vendor subsequently. Such detail is obtained from the statement of moneys in each instance upon settlement, which was never formally tendered in the trial (given the partial admissions in Exhibit P 13) but was provided to the Court and the prosecution in the defence draft Jury book.

No remorse

26 Mr Hassan ran the trial. While of course he cannot suffer as a result thereof, as such is clearly his right, the consequence is that he cannot use remorse principles in his plea.

Parity

27 Both counsel have submitted as to the sentences of Anand and Akkala that parity with such sentences has little application in this sentence. I accept that, and say no more than I said in the Becker sentence.

28 As to Akkala and Anand, there are clearly the following differences:

29 (a) Each pleaded guilty, albeit to larger sums: Akkala – 23 loans, $7.6m (one involving himself); Anand – 20 loans, $6.5m.

30 (b) In addition, each undertook to give evidence, and have fulfilled such by giving evidence in the Becker and Hassan trials, therefore confirming their sentences.

31 Akkala and Anand were sentenced respectively on the basis of receiving much lower personal returns from their criminality than either Becker or Hassan, and as such again are in quite a different category. However, as to their sentences, especially Mr Akkala who had a prior, I repeat my respectful comments, given comity, as to the leniency of their sentences (see paragraphs 59 and 76 of the Becker sentence). In that regard I took into account the principles outlined in *DPP (Cth) v Peng* [2014] VSCA 128 at paragraph [36] in so far as the Becker sentence was concerned.

32 As to Ms Becker, she was convicted of seven charges of being involved directly as to false representations as to the deposits in the contracts, and complicitly as to the false payslips and other information tendered as part of the application. Hence, to that extent, her criminality encompassed the alleged criminality, in

particular (b), against Mr Hassan which the Jury were not satisfied of in regard to Mr Hassan.

33 However, as I have found, Mr Hassan and entities benefited substantially by the criminality encompassed in the six charges, and, as best as I can determine, to a much larger degree than Ms Becker.

34 Given the Jury findings in regard to Mr Hassan, I do not consider that the *Peng* principles operate in Mr Hassan's favour, except to acknowledge that in sentencing Becker such principles were applicable.

35 As to parity with Becker, I accept the proposition in paragraph 67 of the prosecution submission that, albeit not a co-accused, it would be incongruous to treat their objective criminality differently, given that the offending conduct and financial advantage quantum is similar in each case.

36 However, the Court must recognise the following:

(a) Hassan was convicted of only direct liability crimes.

(b) Hassan and Becker have each, for the purpose of financial gain, taken advantage of dealing with Akkala and Anand.

(c) Hassan and his entities' financial benefit from the criminality I have found to be substantially higher than Ms Becker obtained.

(d) In sentencing Ms Becker, the Court had to deal with the plea of mercy connected to the impact of jailing Ms Becker, given the issues which surrounded the health of both her children and their care and the mitigation involved (see paragraph 101 of the Becker sentence).

37 As the High Court said in *DPP v Dalgliesh (a pseudonym)* (2017) 91 ALJR 1063 at 1072, Mr Hassan is entitled to individualised justice and a just sentence based upon the facts relevant to his case. Such encompasses a sentence which takes

into account the principles of parity, as much as is possible in the circumstances of this case.

38 As to discrimination as to my sentence of Ms Becker of 29 November 2022, I refer to Mr Chadwick's submission at paragraph 20:

(a) (a) I would dispute Mr Chadwick's submission in this regard. Clearly, in this criminality Mr Hassan utilised purchasers who he knew to be financially distressed, who would not otherwise have been able to complete their purchase without the relevant valuations not being disputed. In this regard it is to be noted that, albeit the "purchasers" had previously entered terms contracts, Mr Hassan had in fact prepared new contracts in each instance in order to extract the loans from the ANZ.

(b) (b) and (c) It would appear Ms Becker introduced Hassan to the "convenience of dealing with Akkala and Anand".

(c) (d) Despite Mr Chadwick's submission, the reality, I find, is that Mr Hassan was in fact the real estate agent for both parties in these charges. He received deposits and was paid commission in addition to having the loans paid out.

(d) (e) Again, I do not agree with Mr Chadwick in this regard. I do not think it established as a fact that all purchasers actually paid the deposits as detailed in the contracts that were sent to the Bank. For example, in Charge 10, Ms Dau, the purchaser, said she paid a $5,000 deposit in 2013 in regard to the purchase of land contract, albeit later it was suggested in the contract sent to the ANZ Bank that she paid a deposit of $49,000 (see Exhibit P 10.02). I simply cannot conclude if the said deposits were paid on the evidence. I suspect they were not.

(e) (f) Ms Becker, upon my findings, had a larger role in the criminality of the charges she faced, in that she did so in complicit agreement with Akkala

and Anand, in addition to her direct criminality as to the falsity in the contracts as to the amount of deposit paid.

(f) (g) As to who was the instigator, Mr Hassan must be seen as the instigator in regard to these six charges. These were clients known to him, him and his entities were the only ones to gain, and he was responsible for the falsity as to the estate agents detailed in each contract.

(g) h) Given my finding as to benefit, I clearly do not accept the proposition from Mr Chadwick that the benefit to Mr Hassan and his entities was minimal.

The plea of Mr Chadwick

39 I accept Mr Hassan's personal circumstances, detailed at paragraph 25.

40 Mr Hassan has an excellent prior character, attested to fulsomely by five character witnesses.

41 He is obviously a credit to Australia's migration system and has proved successful in both a business and family regard.

42 I accept his prospects of rehabilitation are excellent, and, as I said to Mr Chadwick, a person who has achieved so much personally without any prior convictions at the age of fifty-seven is entitled to seek leniency from the Court. As Mr Chadwick remarked, it is difficult in these circumstances to understand why Mr Hassan saw fit to be involved in such crimes.

43 To be balanced against such must be the importance of the principle of general deterrence in this sentence, in circumstances where on six occasions Mr Hassan has deliberately breached the law for financial gain.

44 At paragraph 18(d) of his submission, Mr Chadwick raised the issue of delay. Clearly the offending occurred in the eight weeks from 15 March to 15 May 2015. Mr Hassan was interviewed in August 2017, and the committal commenced on

20 May 2019. Mr Hassan was further disadvantaged in this regard by my ruling on 29 May 2020 as to separate trials, meaning that Mr Hassan had to await Ms Becker's trial, and both trials were obviously affected by the issues of the Court dealing with the COVID crisis.

45 I accept Mr Hassan had no role in the delay, and that such delay, in terms of the authorities referred to by Mr Chadwick, must be seen as a powerful mitigatory factor.

46 Mr Hassan appears to have resumed his lawful activities during such delay and made a substantial contribution to the construction of affordable housing, particularly in Western Victoria.

47 I accept the curial punishment already suffered, post-verdict, as detailed in paragraphs 32-35 of the written plea.

Disposition

48 Despite the powerful mitigatory factors put in the plea by Mr Chadwick, Mr Hassan, I have determined that a community correction order would not be appropriate as a sentence in this instance.

49 While I fully accept that such a sentence is possible, given its punitive nature, pursuant to S37 of the *Sentencing Act* (see *Boulton and Anor v R* [2014] VSCA 342), and taking general regard of S5 of the *Sentencing Act*, and specific regard of S5(4C).

50 The words of Priest JA in *Hutchinson v The Queen* [2015] VSCA 115 at paragraph [17] are apposite here:

> "Acknowledging that a CCO might be appropriate 'even in cases of relatively serious offences which might previously have attracted a medium term of imprisonment', it should not be thought that Boulton offers a 'Get Out of Jail Free' card in situations where a sentence of imprisonment is necessary in a given case to satisfy the various purposes for which a sentence may be imposed. One of the purposes for which a sentence may be imposed is, of course, 'to punish the offender to an extent and in a manner which is just in all of the

> circumstances'. There will be cases — indeed, many cases — where, having regard to the seriousness of the offending, a CCO will be insufficiently punitive to satisfy the need to punish the offender in a manner which, in all of the circumstances, is just. At the risk of again traversing well-trodden ground, it is axiomatic that in every case the sentence imposed must depend on its own facts, including the circumstances of the offending and the offender, and the circumstances of aggravation and mitigation."

51 I have found, Mr Hassan's criminality persistent and planned, and committed for the purpose of substantial financial gain by the deliberate false statements as to the identity of the real estate agent in each of these six contracts.

52 Some discrimination can be given in sentencing based on the amounts extracted from the Bank between Charges 4, 5 and 6, Charges 8 and 9, and Charge 10, by the false representations. Such discrimination can be recognised generally in my sentence in addition to all the factors I have referred to. Taking all such factors into account, therefore, Mr Hassan, I ask you to stand please.

Sentence

53 Mr Hassan, in regard to Charge 4, you will be sentenced to imprisonment for two years.

54 In regard to Charge 5, you will be sentenced to imprisonment for two years.

55 In regard to Charge 6, you will be sentenced to imprisonment for two years.

56 In regard to Charge 8, you will be sentenced to imprisonment for two years and three months.

57 In regard to Charge 9, you will be sentenced to imprisonment for two years and three months.

58 In regard to Charge 10, you will be sentenced to imprisonment for two years and six months.

59 Taking the sentence on Charge 10 as the base sentence, I order that one (1) month of each of the sentences imposed on each of the other charges be served

cumulatively upon each other and upon the base sentence, making a total aggregate sentence of two (2) years and eleven (11) months.

60 I order pursuant to S11 of the *Sentencing Act* 1991 (Vic) that you be eligible for parole after serving twenty months.

61 I also note that pursuant to S6J(1) of the *Sentencing Act* 1991 (Vic), it is necessary to record in the records of the Court that you are sentenced as a continuing criminal enterprise offender for each of the charges.

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